

Directive (EU) 2019/944 of the European Parliament and of the Council
of 5 June 2019 on common rules for the internal market for electricity
and amending Directive 2012/27/EU (recast) (Text with EEA relevance)

CHAPTER VI

UNBUNDLING OF TRANSMISSION SYSTEM OPERATORS

Section 2

Independent system operator

Article 44

Independent system operator

1 Where the transmission system belongs to a vertically integrated undertaking on 3 September 2009, Member States may decide not to apply Article 43(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to approval by the Commission.

2 The Member State may approve and designate an independent system operator provided that:

- a the candidate operator has demonstrated that it complies with the requirements laid down in points (b), (c) and (d) of Article 43(1);
- b the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 40;
- c the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;
- d the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5. To that end, it shall provide all the draft contractual arrangements with the candidate operator and any other relevant entity; and
- e the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EU) 2019/943, including the cooperation of transmission system operators at European and regional level.

3 Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 53 and paragraph 2 of this Article shall be approved and designated as independent system operators by Member States. The certification procedure in either Article 52 of this Directive and Article 51 of Regulation (EU) 2019/943 or in Article 53 of this Directive shall be applicable.

4 Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism in accordance with Article 49 of Regulation (EU) 2019/943, as well as for operating, maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator shall be responsible for planning (including authorisation

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procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Section. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

5 Where an independent system operator has been designated, the transmission system owner shall:

- a provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;
- b finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system owner together with the other interested parties;
- c provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; and
- d provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.

6 In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

Article 45

Unbundling of transmission system owners

1 A transmission system owner, where an independent system operator has been appointed, which is part of a vertically integrated undertaking shall be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to transmission.

2 In order to ensure the independence of the transmission system owner referred to in paragraph 1, the following minimum criteria shall apply:

- a persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
- b appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; and
- c the transmission system owner shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.